

**Letter of Findings: 04-20191190
Sales & Use Tax
For Tax Year 2016**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals failed to demonstrate that their purchase of an ATV was eligible for a 100 percent agricultural exemption from use tax.

ISSUE

I. Use Tax - Farm Equipment.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-4](#).

Taxpayers protest the imposition of use tax on their purchase of an all-terrain vehicle ("ATV").

STATEMENT OF FACTS

Taxpayers are Indiana farmers. In 2016, Taxpayers purchased an ATV for use on the farm. The Indiana Department of Revenue ("Department") determined that Taxpayers had purchased the ATV without paying sales tax at the time of purchase or paying use tax after the purchase. The Department determined that the ATV was used in an exempt manner 13 percent of the time based on Taxpayers submission of an AGQ-100 Agricultural Equipment Exemption Usage Questionnaire. Therefore, the Department issued a proposed assessment for use tax and interest on 87 percent of the purchase price. Taxpayers protested the proposed assessment, opting for the Department to make its written decision based on the materials sent in with the protest. Therefore, no administrative hearing was held. This Letter of Findings is written based on the materials in the protest file. Further facts will be supplied as necessary.

I. Use Tax - Farm Equipment.

DISCUSSION

Taxpayers protest the imposition of use tax on their purchase of an ATV in 2016. Although the Department granted a 13 percent exemption for agricultural use, Taxpayers argue that the ATV is entirely used in furtherance of their farm work. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayers had acquired tangible personal property in a retail transaction and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

Taxpayers protest that the ATV should be eligible for a 100 percent agricultural exemption. That exemption is found at IC § 6-2.5-5-2, which states:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's direct use in the direct production, extraction, harvesting, or processing of agricultural commodities, and including material handling equipment purchased for the purpose of transporting materials into such activities from an onsite location.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Also of relevance is [45 IAC 2.2-5-4](#), which states:

- (a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.
- (b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.
- (c) *The following is a partial list of items which are considered subject to the sales tax.*

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
- (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
- (5) Milking machines, filters, strainers, and aerators.
- (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
- (7) Grease and repair parts necessary for the servicing of exempt equipment.
- (8) Containers used to package farm products for sale.
- (9) Equipment designed to haul animal waste.
- (10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(Emphasis added).

Taxpayers believe that the ATV is directly used to directly produce crops, and that it therefore qualifies for the exemption found at IC § 6-2.5-5-2(a). But Taxpayers' main usage of the vehicle is transporting Taxpayers to and from their various fields and blocking roads while transporting farming equipment. Neither use has an immediate effect on the crops being produced or is an essential and integral part of an integrated process producing the crops. Furthermore, purchasing an ATV is not listed as an exempt transaction. In fact, the ATV is essentially used as a replacement for a truck, which is specifically listed as a taxable purchase in [45 IAC 2.2-5-4\(c\)](#).

The evidence shows that the ATV is not exempt beyond the 13 percent of the time it was used to haul crop supplies and feed. Because Taxpayers have not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c), their protest is denied.

FINDING

Taxpayers' protest is denied.

November 1, 2019

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